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Supreme Court, U.S.
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No. 97-625

In The

Supreme Court of the United States

October Term, 1997

QUINTON DRYDEN, *et al.*,

Petitioners,

vs.

MADISON COUNTY, FLORIDA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

RESPONDENT'S BRIEF IN OPPOSITION

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STATEMENT OF THE CASE AND FACTS

The facts and statement of the case are partially stated in the Petitioners' Statements of the Case and Facts. However, Respondent wishes to bring to this Court's attention certain facts and the posture of this case which were not presented by Petitioner, and need to be disclosed in the interest of clarity. To lessen confusion, Respondent, in its Brief in Opposition, will cite to the Appendix of the Petition for Writ of Certiorari. (App. __).

This case was originally decided in favor of the Petitioners by the Trial Judge, who ordered refunds of the special assessments, invalidly levied by county ordinance, for all years involved. (App. 85a-100a). Respondents appealed to the First District Court of Appeal, whereupon, in *Madison County v. Foxx*, 636 So. 2d 39 (Fla. 1st DCA 1994), (App. 51a-84a) that court affirmed the Trial Judge's Order in part, but reversed in part. In its opinion, the District Court affirmed that the special assessments were procedurally invalid. (App. 71a-73a). The District Court also reversed the order of the Trial Judge who had ordered a refund of the special assessments, remanding the refund issue for further proceedings, consistent with the Florida Supreme Court's opinion in *Gulesian v. Dade County School Bd.*, 281 So. 2d 325 (Fla. 1973) (App. 76a-77a) *Gulesian* allows the court to deny refunds of levies, which are ruled illegal or void, if the court finds the levying body acted in good faith.

The District Court determined that there remained factual and legal issues which should be decided by the Trial Judge regarding refunds in this cause. It identified several unanswered questions which relate to the determination of refunds, including whether Respondents acted in good faith, whether a refund was fiscally possible for Respondents and whether the cost of processing such refunds would be unreasonably onerous. (App. 76a-77a). The Petitioners never cited *McKesson v. Div. of Alcoholic Beverages and Tobacco*, 496 U.S. 18 (1990) to the

court except in their petition for rehearing. The court denied the petition for rehearing. This is not surprising, as Florida courts will not entertain additional authorities for the first time on rehearing. *Cartree v. HRS*, 354 So. 2d 81 (Fla. 1st DCA 1977) The Petitioners did not attempt to appeal this decision. However, the Respondents deny that *McKesson* is applicable in any event.

On remand, the Trial Judge determined to allow refunds of the special assessments collected for the years 1991, 1992, and 1993, but decided that because Respondent acted "within the good faith parameters of *Gulesian*," the Petitioners were not entitled to refunds of the special assessments collected for 1989 and 1990. (App. 33a-34a). Not content with this semi-victory, the Petitioners decided to appeal this second Order of the Trial Judge.

Also, the Trial Judge heard testimony that the fiscal impact of a refund would be great and the cost of a refund to Respondent would be of tremendous economic impact on the citizens of Madison County, because of the expense estimated at amounts from $54,000 to $153,000. (App. 43a-45a).

The First District Court of Appeal once again heard argument in this case. The District Court issued its ruling on these issues in *Dryden v. Madison County*, 672 So. 2d 840 (Fla. 1st DCA 1996) (App. 16a-24a).

In their opinion the District Court found that the Trial Judge's determination that the Respondent acted "within the good faith parameters of *Gulesian*" was based upon its finding that the Respondent's actions were founded upon information obtained from the State Association of County Commissioners meetings and "expert" outside counsel who helped draft the state legislation on special assessments. (App. 20a). The District Court found that the Trial Judge's conclusion that the Respondent acted

in good faith was supported by substantial competent evidence. (App. 21a-22a).

The District Court then considered the assertion by the Petitioners that the Florida Supreme Court's decision in *Gulesian* had been overruled by this Court's decision in *McKesson v. Division of Alcoholic Beverages and Tobacco*, 496 U.S. 18 (1990). The District Court rejected this contention stating that the special assessments were:

> . . . invalidated for failure to follow statutory procedures, and did not involve a violation of the United States Constitution. Thus, the requirements of the United States Supreme Court concerning meaningful remedies are inapplicable in this case.

(App. 22a).

Upon appeal to the Florida Supreme Court, that court affirmed the opinion of the First District Court of Appeal. (App. 1a-15a). It, like all the courts to hear this case before, found no impediment in the United States or Florida Constitutions to denying refunds of the special assessments collected before the trial court initially ruled. (App. 4a-5a).

The Florida Supreme Court's opinion in the instant case properly addresses Federal due process principles:

> Where an invalid tax scheme discriminates among citizens without a legal basis and bestows no commensurate benefit, a refund may be in order. *Department of Revenue v. Kuhnlein*, 646 So.2d 717 (Fla. 1994). Otherwise, the tax could constitute an unlawful taking of property in violation of state and federal rights. *McKesson Corp. v. Division of Alcoholic Beverages & Tobacco*, 496 U.S. 18 (1990).

> Where an invalid tax scheme applies across the board and confers a commensurate benefit, on the other hand, "equitable considerations" may preclude a refund. *Gulesian v. Dade County School Bd.*, 281 So.2d 325 (Fla. 1973).
>
> In the present case, the 1989 and 1990 assessments fall in the latter category. The assessments were non-discriminatory (i.e., they applied across the board to all property owners in the county) and they conferred a commensurate benefit (i.e. they provided garbage collection and disposal, landfill closure, ambulance service, and fire protection). Further the county acted in good faith in imposing these assessments.

(App. 4a-5a).

REASONS FOR DENYING THE WRIT

I.

NEITHER THE DUE PROCESS CLAUSE NOR THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION MANDATES REFUNDS OF SPECIAL ASSESSMENTS OR OTHER LEVIES INVALIDATED FOR PURELY STATE LAW REASONS.

In the instant case, Respondent, by ordinance, levied special assessments, not taxes, to fund certain county services. The levying ordinances were determined by the First District Court of Appeal to be invalid due to procedural irregularities. *Madison County v. Foxx.* (App. 51a-84a). Under Florida Law, and the general law, special assessments are not taxes because special assessments are charges which the county levies to recoup the

special benefit and value provided by the county to particular property. Further, special assessments must be fairly and reasonably apportioned among the properties that receive the special benefit. *City of Boca Raton v. State of Florida*, 595 So. 2d 25 (Fla. 1992). The instant special assessments were not and have not to this day been determined to violate any provision of Federal law or the Federal Constitution. In fact, the same type of special assessments, which did not have the same procedural irregularities, have been recently upheld by the Florida Supreme Court as proper under the law. *Lake County v. Water Oak Management Corp.*, 695 So. 2d 667 (Fla. 1997); *Harris v. Wilson*, 693 So. 2d 945 (Fla. 1997); *Sarasota County v. Sarasota Church of Christ, Inc.*, 667 So. 2d 180 (Fla. 1995).

Thus, this case does not involve a situation where a tax, much less a special assessment, violates Federal law. Here the special assessments, enacted by county ordinance of the Board of County Commissioners of Madison County, Florida were not determined to be illegal, but merely void for not meeting the procedural requirements for ordinances enacting special assessments under the laws of the State of Florida. (App. 71a-73a). Accordingly, *McKesson*, and other decisions of this Court do not mandate refunds.

The State Supreme Court of Utah has recently considered this issue in the case of *Kennecott v. State Tax Com'n*, 862 P.2d 1348 (Utah 1993). In the *Kennecott* case the Supreme Court of Utah struck down a Utah State statute for violating its State Constitution. The petitioners sought refunds of the amount of the assessments paid pursuant to the stricken law, and cited the *McKesson* case as authority for the proposition that the Federal Constitution mandated such refunds. The Utah Court flatly rejected such assertion:

> *McKesson* is inapplicable here. In *McKesson*, the Court repeatedly stated that its decision was based

> on Florida's violation of the Commerce Clause. In this case, the tax scheme was stricken as a violation of the Utah Constitution's prohibition against unequal taxation. No Federal law was involved. This court has repeatedly recognized that "[t]he purely prospective application of a state court decision overruling prior authority in a civil case [involving state law] violates no right under the United States Constitution." Thus, federal law does not govern the question of whether a state court decision involving state law should be applied retroactively or prospectively.

Kennecott, 862 P.2d 1348 at 1353

In reaching this conclusion the Utah Supreme Court relied upon this Court's opinion in the case of *Great Northern Railway Co. v. Sunburst Oil & Refining Co.*, 287 U.S. 358 (1932) in which Justice Cardozo stated:

> [T]he Federal Constitution has no voice upon the subject [of retroactivity versus prospectivity]. A state in defining the limits of adherence to precedent may make a choice for itself between the principle of forward operation and that of relation backward. . . .
>
> The choice for any state may be determined by the juristic philosophy of the judges of her courts, their conceptions of law, its origin and nature. We review, not the wisdom of their philosophies, but the legality of their acts.

Kennecott, 862 P.2d 1348, at 1353, and *Great Northern Railway*, 287 U.S. 358, at 364-365.

Since the Federal Constitution has no voice on the subject,

Great Northern Railway, supra, the petitioners' due process and equal protection arguments cannot apply.

This position, as well as the continued vitality of the *Great Northern Railway* case are supported by *McKesson*'s companion case *American Trucking Association, Inc. v. Smith*, 496 U.S. 167 (1990),

> When questions of State Law are at issue, state courts generally have the authority to determine the retroactivity of their own decisions. *See Great Northern R. Co. v. Sunburst Oil & Refining Co.*, 287 U.S. 358, 53 S. Ct. 145, 77 L. Ed. 360 (1932) ("We think the federal constitution has no voice upon the subject [of whether a state court may decline to give its decisions retroactive effect]").

American Trucking, 496 U.S. 167, at 177.

The Court of Appeals for the Fifth Circuit has also addressed this proposition of law in its opinion of *Wilson v. Valley Electric Membership Corp.*, 8 F.3d 311 (5th Cir. 1993). This case concerned whether customers of a rural electric cooperative would receive a refund of rate increases which allegedly violated the Louisiana Constitution, but did not violate the laws or Constitution of the United States. The court of appeals approved the order of the trial court which abstained from considering the case in favor of state-court review. The court's decision was based in part on the recognition that:

> There are only state law issues in this case. These are, first, whether the Louisiana Supreme Court's decision in *Cajun Electric*[1] should apply

1. *Cajun Elec. Power Coop., Inc. v. Louisiana Pub. Serv. Comm'n*, 544 So. 2d 362 (La. 1989), *cert. denied*, 493 U.S. 991 (1989).

> retroactively, and, second, if so, whether it invalidates prior rate increases. The Supreme Court has declared: "When questions of State Law are at issue, state courts generally have the authority to determine the retroactivity of their own decisions." *American Trucking Ass'n v. Smith*, 496 U.S. 167, 177, 110 S.Ct. 2323, 2330, 110 L.Ed.2d 148 (1990) (plurality opinion) (citing *Great N. Ry. v. Sunburst Oil & Ref. Co.*, 287 U.S. 358, 364, 53 S.Ct. 145, 148, 77 L.Ed. 360 (1932)).

Wilson v. Valley Electric Membership Corp., 8 F.3d 311, at 314 (5th Cir. 1993).

This Court has explained its rulings on whether due process requires refunds in the recent case of *Reich v. Collins*, 513 U.S. 106 (1994). In *Reich* this Court explained *McKesson* and the cases on which it was based as follows:

> Reich then petitioned the Georgia Supreme Court for reconsideration of its decision on the grounds that even if the Georgia tax refund statute does not require a refund, federal due process does-due process, that is, as interpreted by *McKesson Corp. v. Division of Alcoholic Beverages and Tobacco, Fla. Dept. Of Business Regulation*, 496 U.S. 18, 110 S.Ct. 2238, 110 L.Ed.d. 17 (1990), and the long line of cases upon which *McKesson* depends. See *id.*, at 32-36, 110 S.Ct., at 2247-2250, citing *Iowa-Des Moines Nat. Bank v. Bennet*, 284 U.S. 239, 52 S.Ct. 133, 76 L.Ed. 265 (1931); *Montana Nat. Bank of Billings v. Yellowstone County*, 276 U.S. 499, 48 S.Ct. 331, 72 L.Ed. 673 (1928); *Carpenter v. Shaw*, 280 U.S. 363, 50 S.Ct. 121, 74 L.Ed. 265 (1930); *Ward v. Board of County Commr's of Love County*, 253

> U.S. 17, 40 S.Ct. 419, 64 L.Ed. 751 (1920); *Atchinson, T. & S.F.R. Co. v. O'Conner*, 223 U.S. 280, 32 S.Ct. 216, 56 L.Ed. 436 (1912); see generally Fallon & Meltzer, New Law, Non-Retroactivity, and Constitutional Remedies, 104 Harv.L.Rev. 1733, 1824-1830 (1991). As we said, these cases stand for the proposition that "a denial by a state court of a recovery of taxes *exacted in violation of the laws or constitution of the United States* by compulsion is itself a contravention of the Fourteenth Amendment," *Carpenter, supra* (emphasis added).

Reich v. Collins, 513 U.S. 106 at 109 (1994).

Thus, the cases cited by the Petitioners, *Reich v. Collins*, 513 U.S. 106 (1994); *Ward v. Love County*, 253 U.S. 17 (1920); *James B. Beam Distilling Co. v. Georgia*, 501 U.S. 529 (1991); *Harper v. Virginia Dept. of Taxation*, 509 U.S. 86 (1993); etc., are inapplicable due to the fact that they deal with violations of the Federal Constitution or Federal law. Thus, this Court should not mandate refunds here because the instant case is free of Federal Constitutional issues.

The decisions of this Court, cited by the Petitioners in their attempt to apply Federal due process and equal protection jurisprudence to the instant case, do not apply to judgments based solely on state law. Therefore they do not conflict with the Florida Supreme Court's decision in the instant case, and will each be addressed accordingly.

In *James B. Beam Distilling Co. v. Georgia*, 501 U.S. 529 (1991) the United States Supreme Court decided whether the courts of the State of Georgia could deny a refund to the distillers who paid a Georgia State tax which violated the Commerce Clause of the United States Constitution. This was the same type of tax

which the Florida Supreme Court invalidated because it violated the Commerce Clause of the United States Constitution in *Division of Alcoholic Bev. and Tobacco v. McKesson*, 574 So. 2d 114 (Fla. 1991), and for which this Court ordered the State of Florida to provide a remedy in *McKesson v. Division of Alcoholic Beverages & Tobacco*, 496 U.S. 18 (1990).

This Court, in *Beam*, found that the State did in fact have to give a refund and, as the petitioners assert, disapproved selective prospectivity. This however does not mean that the *Beam* decision is in conflict with the Florida Supreme Court's decision in the instant case.

Beam, dealt with issues of *Federal* law and the remedies which states must give to persons who have had their *Federal* rights violated. This makes *Beam* completely dissimilar from the case at hand as the instant case only involves issues of *state* law. As the Court stated in *American Truck Assoc. v. Smith*, 496 U.S. 167 (1990),

> When questions of state law are at issue, state courts generally have the authority to determine the retroactivity of their own decisions. See *Great Northern R. Co. v. Sunburst Oil & Refining Co.*, 287 U.S. 358, 364, 53 S.Ct. 145, 148, 77 L.Ed. 360 (1932) ("We think the federal constitution has no voice on the subject [of whether a state court may decline to give its decisions retroactive effect]"). The retroactive applicability of a constitutional decisions of this Court, however, "is every bit as much of a federal question as what particular federal constitutional provisions themselves mean, what they guarantee, and whether they have been denied."

American Truck Assoc. v. Smith, 496 U.S. 167, 177-178 (1990).

Therefore the *Beam* opinion, as it concerns selective prospectivity or any other issue of retroactivity is binding precedent

on State Courts only when deciding Federal issues. As this case does not involve the violation of any Federal right or other Federal issue, this Court is not bound to follow the reasoning of *Beam* as it concerns prospectivity.

Further, even if this Court were bound to follow the reasoning of *Beam* as it pertains to prospectivity, the opinion in *Beam* is not inconsistent with the opinion issued in this case.

As interpreted by this Court's later opinion in *Harper v. Virginia Dept. of Taxation*, 509 U.S. 86 (1993) this Court's opinion in *Beam* does not mandate refunds of taxes in all cases. In *Harper* the state courts of the State of Virginia refused to apply an opinion of this Court retroactively. The issue in *Harper* concerned the disposition of the taxes levied by the State of Virginia on federal employees' retirement benefits. The United States Supreme Court decided that the taxing of federal employees' retirement benefits, under the then existing laws of the State of Virginia, violated the protections of the United States Constitution.

In *Harper,* this Court ruled that all court's would have to give the United States Supreme Court's application of a rule of Federal law retroactive effect.

> *Beam* controls this case, and we accordingly adopt a rule that fairly reflects the position of a majority of the Justices in *Beam:* When this Court applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases still open on direct review and to all events, regardless of whether such events predate or postdate our announcement of the rule.

Harper v. Virginia Dept. of Taxation, 509 U.S. 86 at 97 (1993).

However, after ruling that the decision would apply retroactively, *the Court refused to order a refund of the taxes at issue.*

> Because we have decided that *Davis* applies retroactively to the tax years at issue in petitioners' refund action, we reverse the judgment below. We do not enter judgment for petitioners, however, because federal law does not necessarily entitle them to a refund. Rather the Constitution requires Virginia "to provide relief consistent with federal due process principles." *American Trucking*, 496 U.S., at 181, 110 S.Ct., at 2332 (plurality opinion).

Harper v. Virginia Dept. of Taxation, 509 U.S. 86 at 100 (1993).

Thus, even under the opinions cited by the Petitioners, which require retroactive application of rules of Federal law, this Court has not mandated refunds in every case. Rather that the courts provide relief consistent with the Federal due process principles.

II.

THE DENIAL OF REFUNDS CANNOT BE SAID TO DENY ANY PERSON DUE PROCESS AS EVERYONE WHO PAID THE SPECIAL ASSESSMENTS RECEIVED A COMMENSURATE BENEFIT IN THE FORM OF THE SPECIAL BENEFITS ENJOYED BY THE PROPERTY SO ASSESSED, FURTHER THE LEVYING AUTHORITY CANNOT BE SAID TO HAVE ACTED IN BAD FAITH AS THE STATE COURTS CONFIRMED THAT THIS AREA OF STATE LAW WAS UNSETTLED AND SUBJECT TO VARYING INTERPRETATIONS.

The Florida Supreme Court's opinion does address Federal due process principles as they pertain to this case:

> Where an invalid tax scheme discriminates among citizens without a legal basis and bestows no commensurate benefit, a refund may be in order. *Department of Revenue v. Kuhnlein*, 646 So.2d 717 (Fla. 1994). Otherwise, the tax could constitute an unlawful taking of property in violation of state and federal rights. *McKesson Corp. v. Division of Alcoholic Beverages & Tobacco*, 496 U.S. 18 (1990). Where an invalid tax scheme applies across the board and confers a commensurate benefit, on the other hand, "equitable considerations" may preclude a refund. *Gulesian v. Dade County School Bd.*, 281 So.2d 325 (Fla. 1973).
>
> In the present case, the 1989 and 1990 assessments fall in the latter category. The assessments were non-discriminatory (i.e., they applied across the board to all property owners in the county) and they conferred a commensurate

> benefit (i.e. they provided garbage collection and disposal, landfill closure, ambulance service, and fire protection). Further the county acted in good faith in imposing these assessments.

(App. 4a-5a).

The commensurate benefit enjoyed by the people subject to the special assessments allows the court to deny a refund because no person can claim they were asked to pay for any service they did not receive. The fact that the petitioners each received a commensurate benefit satisfies the Federal due process principles in this case. Special assessments generally, and the special assessments in this case in particular, are not taxes, in that a tax is a levy which the individual must pay without any guarantee that he will receive anything in return. Special assessments, however, are levies which must be no greater than the amount of special benefit the owner's property receives from the service provided. *City of Boca Raton v. State of Florida*, 595 So. 2d 25 (Fla. 1992). Thus, it would be inequitable to require Madison County to refund the special assessments levied in this case, to property owners who have already enjoyed the special benefits and attendant value of the services provided.

The Petitioners assert that the Florida Supreme Court never addressed the "inequity" created by the fact that the property owners who paid during the first two years will not get a refund while the property owners who did not pay will not be required to pay.

As stated in the majority's opinion in consideration of the fact that these charges applied across the board and conferred a commensurate benefit, the court determined that these "equitable considerations" precluded a refund. (App. 5a).

Finally, the Petitioners raise the procedural problems with the enactment of the county ordinances which levied the special assessments as evidence of bad faith and that since the Petitioners had filed suit, the County was on notice as to the doubtful validity of the ordinances. This issue was best addressed by the District Court in *Madison County v. Foxx*, and later in *Dryden v. Madison County*, when it said,

> We have briefly, but by no means exhaustively, outlined the legislative history of the pertinent provisions of section 125.01 to illustrate that this statute and its legislative history, do not conclusively answer the question of the authority of counties to impose special assessments within municipalities, nor does the body of case law cited by the parties. That experienced lawyers, who have argued cases on the meaning of these statutes and the constitutional provisions for several years-one nearly a quarter of a century ago-argue vehemently such divergent interpretations of these statutes is testimony to their confusing message and the need for legislative action.

(App. 21a, 73a).

As was stated by the District Court it was not apparent that the ordinances in question were flawed. The county should not be viewed as having acted in bad faith by relying on their counsel's interpretation of a statute which the District Court concluded did not conclusively answer the question.

CONCLUSION

For the reasons stated, that this case involves mere local issues surrounding the enactment of a county ordinance under state law, and that there are no Federal constitutional rights which have been impinged, this Court is impelled to deny this petition.

Respectfully submitted,

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